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No. 111 Original

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

STATE OF DELAWARE,

Plaintiff,

and

STATE OF TEXAS,

Plaintiff in Intervention,

v.

STATE OF NEW YORK,

Defendant.

MOTION OF THE STATE OF MINNESOTA FOR LEAVE TO INTERVENE AND COMPLAINT IN INTERVENTION

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MOTION OF THE STATE OF MINNESOTA FOR LEAVE TO INTERVENE

Pursuant to Rule 9 of the Rules of the Supreme Court, the State of Minnesota, a sovereign state of the United States of America, by and through Hubert H. Humphrey, III, Attorney General for the State of Minnesota, moves this Court for an order permitting intervention in the above-styled case, and permitting the adoption, to the extent appropriate, of the brief in support of motion for leave to file a complaint filed by the State of Texas, the plaintiff in intervention. In support of this motion, the State of Minnesota states the following:

1. On or about May 31, 1988, this Court granted the motion of plaintiff, State of Delaware (Delaware), for leave to file a complaint invoking the original jurisdiction of this Court to resolve a controversy between Delaware and the defendant, State of New York (New York), as to which state is entitled to claim and take possession of certain unclaimed intangible personal property, consisting of monies and other intangible property (excess receipts),[1] held or formerly held by securities brokerage houses incorporated in Delaware and demanded by or remitted to New York.

2. On December 12, 1988, Thomas H. Jackson was appointed Special Master in this case.

3. On February 21, 1989, this Court granted the motion of Texas to intervene and file its complaint in intervention in this case.

4. On September 13, 1989, the Special Master filed his Report of the Special Master on Motions to Intervene. Citing *Maryland v. Louisiana*, 451 U.S. 725 (1981) and *United States v. Louisiana*, 354 U.S. 515 (1957), the Special Master recommended that the Court grant motions to intervene by eight additional states and the District of Columbia, on the grounds that the states are sovereign entities whose interests are affected and a generous intervention standard should be used.

5. On October 12, 1989, Texas filed a motion for leave to file an amended complaint in intervention.

6. As set forth in detail in its amended complaint, Texas claims a portion of the excess receipts which constitute the subject matter of the original controversy between Delaware and New York, specifically, that portion of the excess receipts

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[1] In its amended complaint in intervention, the plaintiff in intervention, Texas, has defined certain terms relative to this case. The State of Minnesota incorporates those definitions in this motion by reference.

held or formerly held by securities brokerage houses incorporated in Delaware which are attributable to issuers incorporated in Texas.

7. Texas also claims the right to take custodial possession of certain additional excess receipts, consisting of excess receipts attributable to issuers incorporated in Texas held or formerly held by the Depository Trust Company and excess receipts which have arisen in connection with distribution made by Texas municipal and other governmental issuers (additional excess receipts) which are now being demanded by or remitted to New York. It is the understanding of the State of Minnesota that the Court intends to consider claims to both the excess receipts originally at issue and the additional receipts identified by Texas.

8. Texas claims a portion of the excess receipts and the additional excess receipts for the reason that they constitute a debt owed by the issuer to the securities' beneficial owner. If the identity of the beneficial owner is unknown, the excess receipts and additional excess receipts should be remitted to the state of incorporation of the issuer under that state's unclaimed property law.

9. The State of Minnesota claims a portion of the excess receipts and additional excess receipts at issue in this action, specifically, that portion of the excess receipts and additional excess receipts attributable to the issuers incorporated in the State of Minnesota and that portion attributable to Minnesota municipalities and other governmental issuers.

10. The amount of excess receipts and additional excess receipts that the State of Minnesota is entitled to claim is presently unknown. The State of Minnesota has never, prior to this lawsuit, had any reason to identify and quantify such excess receipts and additional excess receipts. It is probable that at least one issuer incorporated in the State of Minnesota

has generated excess receipts and/or additional excess receipts. Moreover, it is virtually certain that bonds issued by Minnesota municipalities and other governmental entities have generated additional excess receipts subject to the claim of the State of Minnesota.

11. The State of Minnesota asserts its claim pursuant to Minn. Stat. § 345.31, *et seq.* (1988), as amended, which provides that any stock or other intangible ownership interest in a business association and any dividend, distribution, or other sum payable to the owner as a result of the interest, which has remained unclaimed by the owner for seven years, is presumed abandoned and owing to the state, if it is held or owed by a business association organized under the laws of or created in the State of Minnesota. Minn. Stat. § 345.35 (1988). Moreover, all property in Minnesota not otherwise covered under any provision of the Minnesota law, including any income or increment thereon that is held or owing in this state in the ordinary course of the holder's business which has remained unclaimed by the owner for more than five years after it became payable or distributable, is presumed abandoned and payable to the state. Minn. Stat. § 345.39 (1988). The full text of Minnesota's Uniform Disposition of Unclaimed Property Act is set forth in the appendix to this motion.

12. The State of Minnesota supports and adopts as if set forth fully by the State of Minnesota in its own pleadings the brief in support of motion for leave to file by Texas, and the factual and legal arguments set forth therein, to the extent the same are applicable and relevant to the claims of the State of Minnesota set forth in paragraph 8 of this motion.

13. It is essential that the State of Minnesota be permitted to intervene in its own right in this proceeding. The decision of this Court will establish a rule of law which will conclu-

sively determine the future right of the State of Minnesota to claim and take possession of unclaimed property similar or identical in nature to the excess receipts and additional excess receipts at issue in this case. Additionally, if the State of Minnesota is to establish its claim and right to take custodial possession of a portion of the property presently at issue, it must have access to the discovery process in order to identify those excess receipts and additional excess receipts attributable to issuers incorporated in the State of Minnesota. As a party, the State of Minnesota can obtain a ruling from this Court recognizing its right to take possession of specific unclaimed property pursuant to its individual unclaimed property laws and ordering New York to tender such property to the State of Minnesota.

14. Based on the foregoing, the State of Minnesota is entitled to intervene as a matter of right pursuant to Rule 24(a)(2), Federal Rules of Civil Procedure. Alternatively, the State of Minnesota urges this Court to exercise its discretion and grant the requested intervention pursuant to Rule 24(b), Federal Rules of Civil Procedure.

15. The intervention of the State of Minnesota in this action will not unduly delay these proceedings or prejudice the adjudication of the rights of the present parties. To the extent that it can do so, Texas has offered to serve as lead counsel for those states, including the State of Minnesota, wishing to intervene and represent themselves in this case. The addition of the State of Minnesota as a plaintiff in intervention will not result, therefore, in an unmanageable increase in the number of parties to this litigation.

16. This Court in *Western Union Telegraph Company v. Pennsylvania*, 368 U.S. 71 (1961), recognized the difficulties inherent in resolving controversies between different states

over their respective rights to claim and take possession of unclaimed intangible personal property, and concluded that this Court was the appropriate forum in which "all the states that want to do so can present their claims for consideration and final, authoritative determination." *Id.* at 79. *See also Pennsylvania v. New York*, 407 U.S. 206 (1972). It is such an opportunity to present its claim that the State of Minnesota seeks by urging this Court to grant leave to intervene in this case.

THEREFORE, the State of Minnesota requests that it be permitted to intervene as a party plaintiff in this case to assert the claims set forth in the attached complaint in intervention.

Respectfully submitted,

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COMPLAINT IN INTERVENTION OF THE STATE OF MINNESOTA

I.

INTRODUCTION

The State of Minnesota (Minnesota), the plaintiff in intervention, by Hubert H. Humphrey, III, Attorney General of the State of Minnesota, with leave first had, files this complaint in intervention in the above-styled and numbered cause, and states as follows:

II.

JURISDICTION

1. The original jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution of the United States and Section 1251 of Title 28 of the United States Code.

III.

PENDING ACTION

2. On May 31, 1988, this Court granted the plaintiff State of Delaware's (Delaware) motion for leave to file a complaint invoking the original jurisdiction of this Court to resolve a controversy between Delaware and the defendant State of New York (New York) as to which state is entitled to claim and take possession of certain unclaimed moneys and other intangible personal property held by securities brokerage firms in Delaware.

3. On February 21, 1989, this Court granted the State of Texas's (Texas) motion for leave to file a complaint in intervention. The Texas complaint also made subject to this suit certain additional unclaimed intangible personal property held by securities brokerage firms and non-brokerage firm intermediaries.

IV.

INTEREST AND CLAIM OF MINNESOTA

4. Minnesota acts by and through the Attorney General of Minnesota, the official of Minnesota charged with the duty under the Constitution and laws of Minnesota of prosecuting unclaimed property suits and representing Minnesota in litigation generally.

5. Minnesota seeks a determination of its rights to certain of the unclaimed intangible personal property, referred to as "excess receipts" and "additional excess receipts," which comes into being and acquires its character as unclaimed property in the context of securities transactions.

6. Minnesota is entitled to a portion of the excess receipts and additional excess receipts at issue in this litigation because they constitute a debt of the entity (issuer) initially issuing the shares of stock, bonds, debentures or other securities instruments owed to the entity or individual (beneficial owner) who has the economic rights to the security, including the entitlement to distributions.

7. If the identity and location of the beneficial owner is unknown, the state of incorporation of the issuer should be entitled to collect the excess receipts and additional excess receipts under that State's unclaimed property law. Under existing law and practice, a debt of identical character is remitted to the issuer state of incorporation when held by the issuer's paying agent, so it should be similarly remitted to the state of incorporation of the issuer when held by other agents in the securities holding, transfer, and distribution system. Distributions generated by issuers incorporated in Minnesota and those generated by Minnesota which are unclaimed and whose beneficial owner is unknown, should be returned to

Minnesota. The claim of Minnesota is based on the practical reality and manner in which securities are traded and distributions are paid, and relies upon a strict interpretation of the Court's holding in *Texas v. New Jersey*, 379 U.S. 674 (1965).

8. By this action, Minnesota seeks a judgment that New York pay to Minnesota all excess receipts and additional excess receipts attributable to issuers incorporated in Minnesota and those that are attributable to issuers that are Minnesota municipalities or other governmental entities. Minnesota further seeks a declaration that it has the right in the future to claim and take possession of excess receipts and additional excess receipts without interference from any other state. Minnesota additionally seeks an order from this Court enjoining and restraining New York from demanding or collecting excess receipts and additional excess receipts, and from expending any such sums collected, but presently unspent, which are attributable to issuers incorporated in Minnesota and to issuers that are Minnesota municipalities or other governmental entities, until such time as this controversy is resolved.

9. Minnesota asserts its claim pursuant to Minn. Stat. § 345.31, *et seq.* (1988), as amended, which provides, in essence, for the custodial taking of abandoned or unclaimed property when the existence and location of the owner of the property is unknown to the holder of the property, and no claim to such property has been asserted within the applicable dormancy period, which is seven years for stock and other intangible interests in business associations and five years for most other types of personal property in Minnesota.

V.

DEFINITIONS

10. Minnesota adopts by reference the definitions of the terms set forth by Texas in its amended complaint in intervention on pages 10 through 15.

VI.

PRAYER FOR RELIEF

THEREFORE, Minnesota requests that this Court grant the following relief:

1. That Minnesota be allowed to intervene in this case to protect its interests;

2. That New York be restrained and enjoined from collecting any excess receipts and additional excess receipts attributable to issuers incorporated or organized in Minnesota or attributable to Minnesota governmental issuers, and from expending any sums collected but presently unspent, consisting of such excess receipts and additional excess receipts, until such time as this controversy is resolved;

3. That New York be directed to pay or deliver to Minnesota all of the excess receipts and additional excess receipts paid or delivered to New York attributable to issuers incorporated or organized in Minnesota and Minnesota governmental issuers which have been abandoned for the applicable dormancy period under Minnesota's unclaimed property law.

4. That Minnesota be granted such other and further relief as the Court deems just and equitable.

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November 8, 1989.

APPENDIX

APPENDIX TO MOTION
UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT, MINN. STAT. §§ 345.31 - 345.60

UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

345.31 DEFINITIONS AND USE OF TERMS.

Subdivision 1. As used in sections 345.31 to 345.60, unless the context otherwise requires, the terms defined in this section shall have the meanings ascribed to them.

Subd. 2. "Banking organization" means any bank, trust company, savings bank, safe deposit company or private banker engaged in business in this state.

Subd. 3. "Business association" means any corporation, joint stock company, business trust, partnership, cooperative, or any association for business purposes of two or more individuals.

Subd. 3a. Commissioner. "Commissioner" means the commissioner of commerce.

Subd. 4. "Financial organization" means any savings and loan association, building and loan association, credit union, industrial loan and thrift company or investment company engaged in business in this state.

Subd. 5. "Holder" means any person in possession of property subject to sections 345.31 to 345.60 belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to sections 345.31 to 345.60.

Subd. 6. "Life insurance corporation" means any association or corporation, including a fraternal beneficiary associa-

tion as defined in section 64B.01, transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

Subd. 7. "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to sections 345.31 to 345.60 or the person's legal representative.

Subd. 8. "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

Subd. 9. "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise or license for the transmission of communications or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam or gas.

345.32 PROPERTY HELD BY BANKING OR FINANCIAL ORGANIZATIONS OR BY BUSINESS ASSOCIATIONS.

The following property held or owing by a banking or financial organization or by a business association is presumed abandoned:

(a) Any demand, savings or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding contracted service charges which may be deducted for a period not to exceed one year, unless the owner has, within five years:

(1) increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(2) corresponded in writing with the banking organization concerning the deposit; or

(3) otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization; or

(4) received tax reports or regular statements of the deposit by mail from the banking or financial organization regarding the deposit. Receipt of the statement by the owner should be presumed if the statement is mailed first class by the banking or financial organization and not returned; or

(5) acted as provided in paragraphs (1), (2), (3) and (4) of this subsection in regard to another demand, savings or time deposit made with the banking or financial organization.

(b) Any funds or dividends deposited or paid in this state toward the purchase of shares or other interest in a business association where the stock certificates or other evidence of interest in the business have not been issued, or in a financial organization, and any interest or dividends thereon, excluding contracted service charges which may be deducted for a period not to exceed one year, unless the owner has within five years:

(1) increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(2) corresponded in writing with the financial organization concerning the funds or deposit; or

(3) otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization; or

(4) received tax reports or regular statements of the deposit or accounting by mail from the financial organization or business association regarding the deposit. Receipt of the statement by the owner should be presumed if the statement

is mailed first class by the financial organization or business association and not returned.

(c) Any sum, excluding contracted service charges which may be deducted for a period not to exceed one year, payable on checks certified in this state or on written instruments issued in this state, or issued in any other state the law in which for any reason does not apply to the abandonment of sums payable on checks certified in that state or written instruments issued in that state, on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, drafts, money orders and traveler's checks, that has been outstanding for more than five years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of traveler's checks, has been outstanding for more than 15 years from the date of its issuance, or, in the case of money orders, has been outstanding for more than seven years from the date of its issuance, unless the owner has within five years, or within 15 years in the case of traveler's checks, or within seven years in the case of money orders, corresponded in writing with the banking or financial organization or business association concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association.

(d) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, that have been unclaimed by the owner for more than five years from the date on which the lease or rental period expired.

(1) If the amount due for the use or rental of a safe deposit box has remained unpaid for a period of six months, the bank, savings bank, trust company, savings and loan, or safe deposit company shall, within 60 days of the expiration of that period, send by certified mail, addressed to the renter or lessee of the safe deposit box, directed to the address standing on its books, a written notice that, if the amount due for the use or rental of the safe deposit box is not paid within 60 days after the date of the mailing of the notice, it will cause the safe deposit box to be opened and its contents placed in one of its general safe deposit boxes.

(2) Upon the expiration of 60 days from the date of mailing the notice, and in default of payment within the 60 days of the amount due for the use or rental of the safe deposit box, the bank, savings bank, trust company, savings and loan, or safe deposit company, in the presence of its president, vice-president, secretary, treasurer, assistant secretary, assistant treasurer or superintendent, or such other person as specifically designated by its board of directors, and of a notary public not in its employ, shall cause the safe deposit box to be opened and the contents thereof, to be removed and sealed by the notary public in a package, in which the notary public shall enclose a detailed description of the contents of the safe deposit box and upon which the notary public shall mark the name of the renter or lessee and, in the presence of one of the bank officers listed above, the notary public shall place the package in one of the bank's general safe deposit boxes and set out the proceedings in a certificate under the notary public's official seal, which shall be delivered to the bank, savings bank, trust company, savings and loan, or safe deposit company.

(3) The bank, savings bank, trust company, savings and loan, or safe deposit company shall hold the contents of abandoned safe deposit boxes until they are claimed by the owner or the bank turns them over to the commissioner pursuant to this chapter.

345.33 UNCLAIMED FUNDS HELD BY LIFE INSURANCE CORPORATIONS.

(a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than five years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding five years, (1) assigned, readjusted or paid premiums on the policy, or

subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Moneys or drafts otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

345.34 DEPOSITS HELD BY UTILITIES.

Any deposit held or owing by any utility made by a subscriber after January 1, 1960, to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, excluding any charges that may lawfully be withheld, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than one year after the termination of the services for which the deposit or advance payment was made is presumed abandoned.

345.35 STOCK AND OTHER INTANGIBLE INTERESTS IN BUSINESS ASSOCIATIONS.

(a) Except as provided in paragraphs (b) and (e), stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if a dividend distribution or other sum payable as a result of the interest has remained unclaimed by the owner for seven years and the owner within seven years has not:

(1) communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or

(2) otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memo-

randum or other record on file with the association prepared by an employee of the association.

(b) At the expiration of a seven-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least seven dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner. If seven dividends, distributions, or other sums are paid during the seven-year period, the period leading to a presumption of abandonment commences on the date payment of the first such unclaimed dividend, distribution, or other sum became due and payable. If seven dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been seven dividends, distributions, or other sums that have not been claimed by the owner.

(c) The running of the seven-year period of abandonment ceases immediately upon the occurrence of a communication referred to in paragraph (a). If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution, or other sum became due and payable.

(d) At the time an interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

(e) This section does not apply to any stock or other intangible ownership interest enrolled in a plan that provides

for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless the records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within seven years communicated in any manner described in paragraph (a).

(f) For purposes of this section, stock or other intangible ownership interest in a business association is presumed abandoned if:

(1) it is held or owing by a business association organized under the laws of or created in this state; or

(2) it is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

345.36 PROPERTY OF BUSINESS ASSOCIATIONS AND BANKING OR FINANCIAL ORGANIZATIONS HELD IN COURSE OF DISSOLUTION.

All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within two years after the date for final distribution, is presumed abandoned.

345.37 PROPERTY HELD BY FIDUCIARIES.

All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within five years after it becomes payable or distributable, increased or decreased the principal, accepted payment of

principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary if:

(a) the property is held by a banking organization or a financial organization or by a business association organized under the laws of or created in this state; or

(b) it is held by a business association, doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state; or

(c) it is held in this state by any other person.

345.38 PROPERTY HELD BY STATE COURTS AND PUBLIC OFFICERS AND AGENCIES.

Subdivision 1. All intangible personal property held for the owner by any court, public corporation, public authority or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than five years is presumed abandoned except as provided in section 524.3-914.

Subd. 2. This section shall not apply to property held for persons while residing in public correctional or other institutions. As to such persons, said property shall be presumed abandoned if it has remained unclaimed by the owner for more than five years after such residence ceases.

Subd. 3. All intangible personal property held for the owner by any government or political subdivision or agency, that has remained unclaimed by the owner for more than five years is presumed abandoned and is reportable pursuant to section 345.41, if:

(a) the last known address as shown on the records of the holder of the apparent owner is in this state; or

(b) no address of the apparent owner appears on the records of the holder; and

(1) the last known address of the apparent owner is in this state; or

(2) the holder is domiciled in this state and has not previously transferred the property to the state of the last known address of the apparent owner.

345.381 PROPERTY HELD BY MINNESOTA PUBLIC PENSION FUND.

No amounts of money held or owing by a public pension fund enumerated in section 356.20, subdivision 2, or 356.30, subdivision 3, or governed by sections 69.77 or 69.771 to 69.776 shall be presumed to have been abandoned for purposes of sections 345.41, 345.42, 345.43, 345.47 and 345.48 if the plan governing the public pension fund includes a provision governing the disposition of unclaimed amounts of money.

345.39 MISCELLANEOUS PERSONAL PROPERTY HELD FOR ANOTHER PERSON.

Subdivision 1. Presumed abandonment. All intangible personal property, not otherwise covered by sections 345.31 to 345.60, including any income or increment thereon, but excluding any charges that may lawfully be withheld, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than five years after it became payable or distributable is presumed abandoned. Property covered by this section includes, but is not limited to: (a) unclaimed wages or worker's compensation; (b) deposits or payments for repair or purchase of goods or services; (c) credit checks or memos, or customer overpayments; (d) unidentified remittances, unrefunded overcharges; (e) unpaid claims, unpaid accounts payable or unpaid commissions; (f) unpaid mineral proceeds,

royalties or vendor checks; and (g) credit balances, accounts receivable and miscellaneous outstanding checks. This section does not include money orders.

Subd. 2. Cooperative property. Notwithstanding subdivision 1, any profit, distribution, or other sum held or owing by a cooperative for or to a participating patron of the cooperative is presumed abandoned only if it has remained unclaimed by the owner for more than seven years after it became payable or distributable.

345.40 RECIPROCITY FOR PROPERTY PRESUMED ABANDONED OR ESCHEATED UNDER THE LAWS OF ANOTHER STATE.

If specific property which is subject to the provisions of sections 345.32, 345.35, 345.36, 345.37 and 345.39 is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subjected to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to sections 345.31 to 345.60 if:

(a) it may be validly claimed as abandoned or escheated under the laws of such other state; and

(b) the laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

345.41 REPORT OF ABANDONED PROPERTY.

(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under sections 345.31 to 345.60 shall report annually to the commissioner with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of $25 or more presumed abandoned under sections 345.31 to 345.60;

(2) in case of unclaimed funds of life insurance corporations, the full name of the policyholder, insured or annuitant and that person's last known address according to the life insurance corporation's records;

(3) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under $25 each may be reported in aggregate;

(4) the date when the property became payable, demandable or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) other information which the commissioner prescribes by rule as necessary for the administration of sections 345.31 to 345.60.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed a name while holding the property, the holder shall file with the report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before October 1 of each year as of December 31 next preceding. The commissioner may postpone the reporting date upon written request by any person required to file a report.

(e) If the holder of property presumed abandoned under sections 345.31 to 345.60 knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, inform the owner of the steps necessary to prevent abandonment from being presumed.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer, and if made by a public corporation, by its chief fiscal officer.

(g) Holders of property described in section 345.32 shall not impose any charges against property which is described in section 345.32, clause (a), (b) or (c).

(h) Any person who has possession of property which the person has reason to believe will be reportable in the future as unclaimed property may, with the permission of the commissioner, report and deliver such property prior to the date required for reporting in accordance with this section.

345.42 NOTICE AND PUBLICATION OF LISTS OF ABANDONED PROPERTY.

Subdivision 1. On or before April 1 of each year, the commissioner shall cause notice to be published at least once but not more than twice in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has a principal place of business within this state.

Subd. 2. The published notice shall be entitled "notice of names of persons appearing to be owners of abandoned property," and shall contain:

(a) the names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified;

(b) a statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the commissioner; and

(c) a statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within 65 days from the date of the second published notice, the abandoned property will be placed not later than 85 days after such publication date in the custody of the commissioner to whom all further claims must thereafter be directed.

The commissioner is not required to publish in such notice any item of less than $25 unless the commissioner deems such publication to be in the public interest.

Subd. 3. On or before April 1 of each year, the commissioner shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of $25 or more presumed abandoned under sections 345.31 to 345.60. Said notice shall contain:

(a) a statement that, according to a report filed with the commissioner, property is being held to which the addressee appears entitled;

(b) the name and address of the person holding the property and any necessary information regarding changes of name and address of the holder; and

(c) a statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the

custody of the commissioner to whom all further claims must be directed.

Subd. 4. This section is not applicable to sums payable on traveler's checks or money orders presumed abandoned under section 345.32.

345.43 PAYMENT OR DELIVERY OF ABANDONED PROPERTY.

Subdivision 1. Every person who has filed a report under section 345.41, within 20 days after the time specified in section 345.42 for claiming the property from the holder, or in the case of sums payable on traveler's checks or money orders presumed abandoned under section 345.32 within 20 days after the filing of the report, shall pay or deliver to the commissioner all abandoned property specified in the report, except that, if the owner establishes a right to receive the abandoned property to the satisfaction of the holder within the time specified in section 345.42, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the commissioner, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

Subd. 2. The commissioner may determine that the payment of abandoned property presents a hardship for a cooperative. On determining that a hardship exists, the commissioner may permit the cooperative to provide payment in equal installments over a period of three years.

(a) If legitimate claims to property reported by the cooperative to the commissioner exceed the installments paid, the excess shall immediately be paid by the cooperative to the commissioner and that amount shall be deducted from the subsequent installments.

(b) This subdivision shall apply only to abandoned property for which reports were filed within 12 months after July 1, 1977.

Subd. 3. Evidence of ownership. The holder of an interest under section 345.35 shall deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificates of ownership to the commissioner. Upon delivery of a duplicate certificate to the commissioner, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with the provision of section 345.44 to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the commissioner, for any losses or damages resulting to any person by the issuance and delivery to the commissioner of the duplicate certificate.

345.44 RELIEF FROM LIABILITY BY PAYMENT OR DELIVERY.

Upon the payment or delivery of abandoned property to the commissioner, the state shall assume custody and shall be responsible for the safekeeping thereof and for payment of any claim successfully brought against any holder on account of any abandoned property paid or delivered to the commissioner. Any person who pays or delivers abandoned property to the commissioner under sections 345.31 to 345.60 is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property by any claimant, including any state. The state indemnifies and holds harmless such person as against any such claim and any loss and damage related thereto, provided that such person shall notify the commissioner of any legal

proceedings against such person in relation to such claim within ten days after service of process upon such person and thus give the state an opportunity of defending such person in such proceeding. Any holder who has paid moneys to the commissioner pursuant to sections 345.31 to 345.60 may make payment to any person reasonably appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee reasonably appeared entitled thereto, the commissioner shall forthwith reimburse the holder for the payment.

345.45 INCOME ACCRUING AFTER PAYMENT OR DELIVERY.

When property is paid or delivered to the commissioner under sections 345.31 to 345.60, the owner is not entitled to receive income or other increments accruing thereafter.

345.46 PERIOD OF LIMITATION NOT A BAR.

The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by sections 345.31 to 345.60 or to pay or deliver abandoned property to the commissioner.

345.47 SALE OF ABANDONED PROPERTY.

Subdivision 1. Except as provided in subdivisions 3 and 5, all abandoned property other than money delivered to the commissioner under sections 345.31 to 345.60 shall be sold by the commissioner to the highest bidder at public sale in whatever city in the state the commissioner judges to afford the most favorable market for the property involved. The sale must be held whenever the commissioner deems necessary

but at least once every ten years. The commissioner may decline the highest bid and reoffer the property for sale if the commissioner considers the price bid insufficient. The commissioner need not offer any property for sale if of the opinion that the probable cost of sale exceeds the value of the property.

Subd. 2. Any sale held under this section shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

Subd. 3. Securities listed on an established stock exchange shall be sold at the prevailing prices on the exchange. Other securities may be sold over the counter at prevailing prices or, with prior approval of the state board of investment, by another method the commissioner determines advisable. United States government savings bonds and United States war bonds shall be presented to the United States for payment.

Subd. 3a. Holding period. All securities presumed abandoned under section 345.35 and delivered to the commissioner must be held for at least three years before they are sold. A person making a claim under this section is entitled to receive either the securities delivered to the commissioner by the holder, if they still remain in the hands of the commissioner, or the proceeds received from the sale, but no person has any claim under this section against the state, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the commissioner.

Subd. 4. The purchaser at any sale conducted by the commissioner pursuant to sections 345.31 to 345.60 shall receive title to the property purchased, free from all claims of the

owner or prior holder thereof and of all persons claiming through or under them. The commissioner shall execute all documents necessary to complete the transfer of title.

Subd. 5. The commissioner shall provide the Minnesota historical society with an inventory of abandoned property, other than money, six months prior to public sale. The society may select for its collections any items it finds of historical value. The society shall make its selection before the commissioner appraises or sorts the material for public sale. The society has 90 days from the date of notification by the commissioner to exercise the authority granted by this subdivision.

345.48 DEPOSIT OF FUNDS.

Subdivision 1. All funds received under sections 345.31 to 345.60, including the proceeds from the sale of abandoned property pursuant to section 345.47, shall forthwith be deposited by the commissioner in the general fund of the state; except that unclaimed restitution payments held by a court under section 345.38 shall be deposited in the crime victim and witness account created in section 609.101, subdivision 1. Before making the deposit the commissioner shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each policyholder, insured person, or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

345.49 CLAIM FOR ABANDONED PROPERTY PAID OR DELIVERED.

Subdivision 1. Filing. Any person claiming an interest in any property delivered to the state under sections 345.31 to

345.60 may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the commissioner.

Subd. 2. Appropriation. There is hereby appropriated to the persons entitled to a refund, from the fund in the state treasury to which the money was credited, an amount sufficient to make the refund and payment.

345.50 DETERMINATION OF CLAIMS.

Subdivision 1. The commissioner shall consider any claim filed under sections 345.31 to 345.60 and may hold a hearing and receive evidence concerning it. If a hearing is held, the commissioner shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard and the reasons for the decision. The decision shall be a public record.

Subd. 2. If the claim is allowed, the commissioner shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

345.51 JUDICIAL ACTION UPON DETERMINATIONS.

Any person aggrieved by a decision of the commissioner or as to whose claim the commissioner has failed to act within 90 days after the filing of the claim, may commence an action in the district court to establish a claim. The proceeding shall be brought within 90 days after the decision of the commissioner or within 180 days from the filing of the claim if the commissioner fails to act. The action shall be tried de novo without a jury.

345.515 AGREEMENTS TO LOCATE REPORTED PROPERTY.

It is unlawful for a person to seek or receive from another person or contract with a person for a fee or compensation for locating property knowing it to have been reported or paid or delivered to the state treasurer pursuant to chapter 345

prior to seven months after the date of delivery of the property by the holder to the state treasurer as required by section 345.43.

No agreement entered into after seven months from the date of delivery of the property by the holder to the state treasurer is valid if a person thereby undertakes to locate property included in a report for a fee or other compensation exceeding ten percent of the value of the recoverable property unless the agreement is in writing and signed by the owner and discloses the nature and value of the property and the name and address of the holder thereof as such facts have been reported. Nothing in this section shall be construed to prevent an owner from asserting at any time that an agreement to locate property is based upon an excessive or unjust consideration.

345.52 ELECTION TO TAKE PAYMENT OR DELIVERY.

The commissioner, after receiving reports of property deemed abandoned pursuant to sections 345.31 to 345.60, may decline to receive any property reported on deeming it to have a value less than the cost of giving notice and holding sale, or the commissioner may, on deeming it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within 120 days after filing the report required under section 345.41, the commissioner shall be deemed to have elected to receive the custody of the property.

345.525 PROPERTY HAVING NO APPARENT COMMERCIAL OR HISTORICAL VALUE.

The commissioner may withhold the property from sales under this section. If it is determined that property delivered to the commissioner has no commercial or historical value the

commissioner may thereafter destroy or otherwise dispose of the property, and in that event no action or proceeding shall be brought or maintained against the state or any officer thereof or against the holder for or on account of any action taken by the commissioner pursuant to chapter 345 with respect to the property. The commissioner shall keep a record of all items destroyed under this section, and all items held by the historical society, including the name and address of the owner of the property and the person who delivered the property to the commissioner, the date of delivery, a description of the property destroyed and the date of destruction.

345.53 EXAMINATION OF RECORDS.

Subdivision 1. The commissioner may at reasonable times and upon reasonable notice examine the records of any person if there is reason to believe that the person has failed to report property that should have been reported pursuant to sections 345.31 to 345.60.

Subd. 2. If an examination of the records of a person results in the disclosure of property reportable and deliverable under sections 345.31 to 345.60, the commissioner may assess the cost of the examination against the holder at the rate of $15 per hour per examiner, but in no case may the charges exceed the value of the property found to be reportable and deliverable.

345.54 PROCEEDING TO COMPEL DELIVERY OF ABANDONED PROPERTY.

If any person refuses to deliver property to the commissioner as required under sections 345.31 to 345.60, or pay the interest provided for by section 345.55, subdivision 3, the commissioner may bring an action in a court of appropriate jurisdiction to enforce such delivery or payment.

345.55 PENALTIES.

Subdivision 1. Any person who willfully fails to render any report or perform other duties required under sections 345.31 to 345.60, shall be guilty of a misdemeanor.

Subd. 2. Any person who willfully refuses to pay or deliver abandoned property to the commissioner as required under sections 345.31 to 345.60 shall be guilty of a gross misdemeanor.

Subd. 3. In addition to any damages, penalties, or fines for which a person may be liable under other provisions of law, any person who fails to pay or deliver unclaimed property within the time prescribed by this chapter after written demand therefor by the commissioner made after March 29, 1978, shall pay to the commissioner interest at the rate of 12 percent per annum on the property or value thereof from the date of the written demand.

345.56 RULES.

The commissioner is hereby authorized to make necessary rules to carry out the provisions of sections 345.31 to 345.60.

345.57 EFFECT OF LAWS OF OTHER STATES.

Sections 345.31 to 345.60 shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to July 1, 1969.

345.58 CUT OFF DATE.

Except as to property required to be reported pursuant to Minnesota Statutes 1967, sections 48.521 to 48.528, sections 345.31 to 345.60 shall not apply to property otherwise subject to sections 345.31 to 345.60 which became due or payable or which was in the possession of the holder before January 1, 1944.

345.59 UNIFORMITY OF INTERPRETATION.

Sections 345.31 to 345.60 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

345.60 CITATION.

Sections 345.31 to 345.60 as enacted and hereafter amended, may be cited as the uniform disposition of unclaimed property act.

PROOF OF SERVICE

I, GREGORY P. HUWE, certify that I am counsel of record for Plaintiff in Intervention, the State of Minnesota, that I am a member of the Bar of the Supreme Court of the United States, and that on the 8th day of November, 1989, I served three copies of the foregoing Motion for Leave to Intervene and Complaint in Intervention, on all parties required to be served by depositing such copies, first class postage prepaid, in the United States mail, addressed as follows:

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